

**OPINION
49-104**

January 5, 1949 (OPINION)

LEGISLATURE

RE: President Pro Tempore of Senate

This is in reply to your request for an opinion from this office as to the required number of votes to elect a president pro tempore of the senate.

Section 31 of the state constitution provides that:

"The senate at the beginning and close of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tempore, who may take the place of the lieutenant governor under rules prescribed by law."

Section 47 of the state constitution provides that:

"Each house shall be the judge of the election returns and the qualifications of its own members."

Section 48 of the state constitution provides that:

"Each house shall have the power to determine the rules of proceedings and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two-thirds, to expel a member; and shall have all other powers necessary and usual in the legislative assembly of a free state. But no imprisonment by either house shall continue beyond thirty days. Punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense."

I have examined the senate rules of 1947, but find no provision specifying the number of votes required for the election of a president pro tempore. Senate rule 71 provides that:

"In the absence of the President of the Senate, or his refusal to act, the President pro tempore shall exercise all rights and prerogatives of the President for the time being."

Section 54 of the state constitution provides that:

"In all elections to be made by the legislative assembly, or either house thereof, the members shall vote viva voce, and their votes shall be entered in the journal."

Section 65 of the state constitution provides that:

"No bill shall become a law except by a vote of a majority of all the members-elect in each house, ****."

Since only a majority of the members-elect is required to enact a law, and since the senate rules are silent as to the number of votes required to elect a president pro tempore, it is the opinion of this office that a majority of the members-elect is sufficient to elect the president pro tempore.

WALLACE E. WARNER

Attorney General